



California Fair Political Practices Commission

February 10, 1988

Maurice E. Huguet, Jr.
Clayton City Attorney
c/o Turner, Huguet & Brans
924 Main Street
PO Box 110
Martinez, CA 94553

Re: Your Request for Advice
Our File No. I-87-330

Dear Mr. Huguet:

This is in response to your follow-up letter on behalf of Mr. Rick Angrisani, contract city engineer for the City of Clayton, regarding his responsibilities under the Political Reform Act (the "Act").^{1/} Once again, because of the general nature of your question, we treat your request as one for informal assistance.^{2/}

QUESTION

Where a surveying firm subcontracts with Mr. Angrisani to do work for a client, would a conflict of interest arise if the client comes before Mr. Angrisani in his capacity as city engineer for the City of Clayton?

CONCLUSION

Mr. Angrisani would have to disqualify himself:

(1) if there would be a nexus between the governmental decision and the purpose for which he received income; or

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

(2) if the decision would materially affect his source of income--the surveying firm.

FACTS

The City of Clayton has entered into an agreement with the firm of Permco Engineering and Management, as represented by Rick Angrisani, to provide services as city engineer. Mr. Angrisani is sole owner of Permco.

Mr. Angrisani is sometimes approached by surveying firms in need of some engineering work for their clients. Mr. Angrisani usually does not have contact with the surveying firm's clients, and he does not make representations on behalf of such clients. Mr. Angrisani is concerned about the potential for a conflict of interest if such a client comes before him in his capacity as city engineer.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

* * *

(c) Any source of income ... aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (c).

Mr. Angrisani is a public official as a consequence of his position as city engineer. (Section 82048.) Accordingly he must refrain from participating in any governmental decision where it is reasonably foreseeable that the effect of the decision would have a material financial effect on a source of income, which is distinguishable from its effect on the public generally.

In our previous response to you regarding Mr. Angrisani's obligations under the Act, we explained that because he is sole owner of Permco, any clients providing income to Permco of \$250 or more in the past twelve months, and doing business in the

City of Clayton, are sources of income to Mr. Angrisani. (Section 82030.) We advised that when his clients appear before him in his capacity as city engineer, he should disqualify himself from participating in those decisions. (Regulation 18702.1, copy enclosed.) In addition, he must disqualify himself when his decision, although not directly affecting his clients, could foreseeably have a material financial effect on his clients. (Regulations 18702 and 18702.2, copies enclosed.)

Under the current set of facts, Mr. Angrisani's client, or source of income, is the surveyor, not the surveyor's client. This conclusion is based on the relationship between the surveyor and Mr. Angrisani. Although the work may be a smaller portion of a larger contract between the surveyor and his client, the surveyor independently initiates the financial relationship with Mr. Angrisani, provides direction where necessary, and is responsible for payment to Mr. Angrisani. Thus, the surveyor is the sole source of income to Mr. Angrisani. (See Advice Letters to Hart, No. A-83-264, and Schechtman, No. A-87-031, copies enclosed.)

Where the public official's source of income does not appear before him but could foreseeably be affected by the governmental decision, the provisions of Regulations 18702 and 18702.2 (copies enclosed) must be applied to determine whether the effects of the decision on the source of income will be "material."

The Nexus Test - Regulation 18702(b)(3)(B)

Regulation 18702(b)(3)(B) provides that the effect of a decision will be material if "there is a nexus between the governmental decision and the purpose for which the official receives income." This provision prohibits a public official from using his public position to accomplish that which he is paid to do in his private capacity. (See Advice Letters to Shaw, No. A-87-114, Swallow, No. A-86-229, and Marovich, A-86-086, copies enclosed.)

For example, assume Mr. Angrisani subcontracted with a surveyor to do some engineering work for a developer in the City of Clayton. Assume, as well, that the engineering work had to meet certain minimum standards, and had to be reviewed and approved by the city engineer. Since Mr. Angrisani would have the discretion to approve or disapprove his own work, he is in the position of being able to use his position as city engineer to benefit his private practice. Thus, when work for which Mr. Angrisani has been promised or received compensation comes before him for review or approval, he would be required

Maurice E. Huguet, Jr.
February 10, 1988
Page 4

to disqualify himself from that decisionmaking process. (See In re Maloney (1977) 3 FPPC Ops. 69, copy enclosed.)

If, on the other hand, the developer appears before him relative to a decision unrelated to the work Mr. Angrisani has done as a subcontractor, Mr. Angrisani does not have to disqualify himself from such decisions unless his decision will have a material financial effect on his source of income, the surveyor.

Material Effect

Regulation 18702.2 contains monetary guidelines for determining whether the effect of a decision will be considered material on a business entity which is a source of income to a public official. These guidelines vary with the financial size of the business entity in question. We will assume in this case that Mr. Angrisani's client is a local business which does not qualify for public sale in California.

Applying Regulation 18702.2(g), a decision will have a material effect on his client if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g).

Thus, if a decision of the city engineer will result in an increase or decrease in the gross revenues, assets or liabilities of \$10,000 or more, or an addition or savings of \$2,500 or more in expenses for his source of income, the city engineer must disqualify himself from that decision.

To offer an example of how Regulation 18702.2 is to be applied, assume that a developer is involved in a project in the City of Clayton. The developer hires a surveyor who is also a source of income to Mr. Angrisani to work on the project. As the project proceeds through its various stages, it must receive approvals from the city engineer. If the decisions of the city engineer could foreseeably require

Maurice E. Huguet, Jr.
February 10, 1988
Page 5

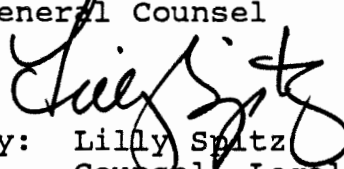
increased expenses or could affect gross revenues for the surveyor in the amounts specified in Regulation 18702.2, the effect of the city engineer's decision is "material".

The financial implications of Mr. Angrisani's decisions depend on the size of the projects coming before him. It is Mr. Angrisani's responsibility to make a reasonable assessment, on a case-by-case basis, of the financial effect of his decisions and whether the effect is material to his source of income.

I trust this analysis is helpful. If I can be of further assistance, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Enclosures

TURNER, HUGUET & BRANS
ATTORNEYS AT LAW
924 MAIN STREET
P. O. BOX 110
MARTINEZ, CALIFORNIA 94553
(415) 228-3433

GORDON B. TURNER
MAURICE E. HUGUET, JR.
KENNETH R. BRANS

DL 31 6 03 AM '87

December 29, 1987

Ms. Lilly Spitz
Counsel, Legal Division
California Fair Political Practices Commission
428 "J" Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Re: Your File No: I 87-243

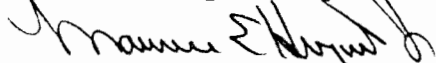
Dear Ms. Spitz:

Thank you for your advice letter of November 19, responding to questions raised by Mr. Rick Angrisani, Contract City Engineer for the City of Clayton. I enclose a copy of letter from Rick to me dated December 9, posing a follow-up question on the subject of his potential conflict of interest situations.

Would you be so kind as to send me a supplemental advice letter responding to Mr. Angrisani's inquiry.

Thank you for your continued assistance.

Yours very truly,



Maurice E. Huguet, Jr.

MEH:dg
Enclosure
cc: Mr. Rick Angrisani

1023h



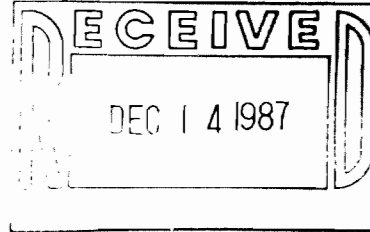
P.O. Box 280 • CLAYTON, CALIFORNIA 94517
TELEPHONE 672-3622

City Council

JAMES C. PARSONS, *Mayor*
ANN HALL, *Vice Mayor*
CAROLYN F. BOVAT
ROY F. HAWES
GREGORY J. MANNING

December 9, 1987

Mr. Maurice E. Huguet, Jr.
Turner, Huguet & Brans
P.O. Box 110
Martinez, California 94553



Re: Conflicts of Interest

Dear Maury:

Thank you for the information from the FPPC concerning my question on conflict of interest.

Reviewing the FPPC letter brought another scenario to mind that you may be able to evaluate. I am approached quite often by surveying firms which need some engineering work done for a particular client. I then enter into a contract with the surveying firm to prepare the engineering plans. I usually do not have any contact with the survey firm's client and do not make any representations on behalf of that client.

Since I am not working directly for the client, am I still subject to a conflict of interest should that client decide to come to Clayton with a project? Assuming I am not subject to conflict of interest charges, is there anything in particular I should do to avoid the appearance of impropriety (other than just disqualifying myself whenever these circumstances arise)?

Hopefully, this will be the end of my questions. Thank you for your assistance.

Very truly yours.

Rick Angrisani
City Engineer



California Fair Political Practices Commission

January 4, 1988

Maurice E. Huguet, Jr.
Turner, Huguet & Brans
P.O. Box 110
Martinez, CA 94553

Re: 87-330

Dear Mr. Huguet:

Your letter requesting advice under the Political Reform Act was received on December 31, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh
cc: Rick Angrisani

TURNER, HUGUET & BRANS
ATTORNEYS AT LAW
924 MAIN STREET
P. O. BOX 110
MARTINEZ, CALIFORNIA 94553
(415) 228-3433

GORDON B. TURNER
MAURICE E. HUGUET, JR.
KENNETH R. BRANS

Dec 31 8 09 AM '87

December 29, 1987

Ms. Lilly Spitz
Counsel, Legal Division
California Fair Political Practices Commission
428 "J" Street, Suite 800
P. O. Box 807
Sacramento, CA 95804-0807

Re: Your File No: I 87-243

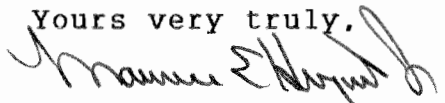
Dear Ms. Spitz:

Thank you for your advice letter of November 19, responding to questions raised by Mr. Rick Angrisani, Contract City Engineer for the City of Clayton. I enclose a copy of letter from Rick to me dated December 9, posing a follow-up question on the subject of his potential conflict of interest situations.

Would you be so kind as to send me a supplemental advice letter responding to Mr. Angrisani's inquiry.

Thank you for your continued assistance.

Yours very truly,


Maurice E. Huguet, Jr.

MEH:dg
Enclosure
cc: Mr. Rick Angrisani

1023h

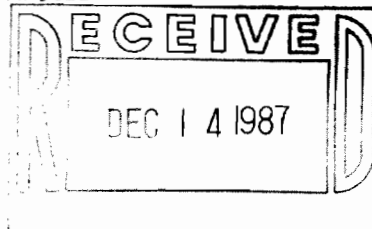


P.O. Box 280 • CLAYTON, CALIFORNIA 94517
TELEPHONE 672-3622

City Council

JAMES C. PARSONS, *Mayor*
ANN HALL, *Vice Mayor*
CAROLYN F. BOVAT
ROY F. HAWES
GREGORY J. MANNING

December 9, 1987



Mr. Maurice E. Huguet, Jr.
Turner, Huguet & Brans
P.O. Box 110
Martinez, California 94553

Re: Conflicts of Interest

Dear Maury:

Thank you for the information from the FPPC concerning my question on conflict of interest.

Reviewing the FPPC letter brought another scenario to mind that you may be able to evaluate. I am approached quite often by surveying firms which need some engineering work done for a particular client. I then enter into a contract with the surveying firm to prepare the engineering plans. I usually do not have any contact with the survey firm's client and do not make any representations on behalf of that client.

Since I am not working directly for the client, am I still subject to a conflict of interest should that client decide to come to Clayton with a project? Assuming I am not subject to conflict of interest charges, is there anything in particular I should do to avoid the appearance of impropriety (other than just disqualifying myself whenever these circumstances arise)?

Hopefully, this will be the end of my questions. Thank you for your assistance.

Very truly yours,

Rick Angrisani
City Engineer